

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

HOWARD INDUSTRIES, INC.,
TRANSFORMER DIVISION

and

Cases 15–CA–18637
15–CA–18772

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 1317

Joseph A. Hoffman, Jr., and Shelly C. Skinner,
Esqs., for the General Counsel.
Elmer E. White III, Esq., for the Respondent.
Roger K. Doolittle, Esq., for the Charging Party

BENCH DECISION

Statement of the Case

GEORGE CARSON II, Administrative Law Judge. This case was tried in Laurel, Mississippi, on July 6, 2009, pursuant to a consolidated complaint that issued on December 22, 2008.¹ The complaint alleges that the Respondent threatened a union steward with discipline for using notes while representing employees and discriminatorily removed a union steward from the plant. The Respondent's answer denies any violation of the Act. After hearing oral argument, I issued a Bench Decision pursuant to Section 102.35(a)(10) of the Board's Rules and Regulations.

Howard Industries, Inc., Transformer Division, the Company, is engaged in the manufacture of electronic products, including transformers, at various locations. Over two thousand employees work at its plant and annex in Laurel, Mississippi. The Company and Union are parties to a current collective-bargaining agreement effective from January 18, 2009, until January 18, 2012. The two incidents that are the basis for the allegations of the complaint herein occurred in 2008 under a prior contract that expired on August 4, 2008. The relevant incidents herein did not constitute contractual violations.

Discipline at the Company's Laurel, Mississippi, facility is handled by the Human Resources Department under the supervision of Labor Relations Manager Loren Koski. After daytime working hours, there are no Human Resources personnel at the plant. The Company has a policy providing for removal of employees, subject to their reporting to Human Resources the following day, for misconduct occurring when no Human Resources personnel are present. The rules pursuant to which employees may be removed include a rule relating to failure to "fully

¹ All dates are in 2008 unless otherwise indicated. The charge in Case 15–CA–18637 was filed on April 28. The charge in Case 15–CA–18772 was filed on September 8, and amended on December 18.

carry out instructions or work assignments” and “using profane, threatening or abusive language or other types of insubordination.”

The facts herein are not in substantial dispute. My decision, in referring to matters about which the witnesses testified, assumed presence at the hearing and omitted the context upon which my assessment of testimony was predicated. I shall herewith rectify that omission.

Regarding the first incident, on April 7, employee Dasmeon Caraway, a painter, was directed to report to Human Resources. He requested the presence of a union steward, and Steward James Chancellor came to accompany him. Prior to what both understood was to be an investigatory interview, Chancellor and Caraway spoke with one another. Although employee Caraway claimed that he was unsure why he had been sent to Human Resources, the notes taken by Steward Chancellor prior to the interview suggest that employee Caraway was aware that the upcoming interview related his failure to use a “breakdown pad” to prevent denting the heavy transformer items upon which he was working. Chancellor, pursuant to his conversation with Caraway, wrote in his notebook, “I never was actually trained to do that job. I only filled in when he needed me. I’m actually a pay rate 17-painter.” Whether the foregoing was true is immaterial. The complaint allegation relates to what occurred at the investigatory interview.

The investigatory interview was conducted by Human Resources Generalist Brant Stringer. Stringer, Chancellor, Caraway, and Rufus McGill, Caraway’s supervisor, were present. Stringer asked Caraway various questions regarding what had occurred on the job. Near the end of the interview, Steward Chancellor raised his notebook and tapped upon it, drawing the attention of employee Caraway to the written comment thereon relating to his lack of training. Employee Caraway admits that he read what was written. Stringer observed that Caraway appeared to be reading and requested that Steward Chancellor close his notebook. By the time Stringer noticed that Caraway appeared to be reading, Caraway had completed stating that which he had read regarding his lack of training. Stringer, who did not request that Chancellor show him the notebook entry, would not have known that Caraway’s recitation was complete. Although Caraway had read the complete entry, Chancellor refused to close the notebook, stating that he needed it “as a tool” to represent the employee. Stringer then told Chancellor to place the notebook outside of the office, and Chancellor did so. Although Chancellor recalled that Stringer threatened him with suspension when first telling him to close the notebook, Caraway recalled that suspension was not mentioned until Chancellor refused to close the notebook after being instructed to do so. Stringer denied making any threat.

The complaint alleges that an employee was threatened with discipline “for using notes while representing other employees.” This was an investigatory interview, not a grievance hearing. Stringer sought to have Caraway respond in his own words rather than read from a prepared script. As discussed in my decision, resolution of the credibility conflict regarding the alleged threat was unnecessary because, even assuming that a threat was made, any threat related to providing a script to the employee, not the steward taking or using notes.

Notwithstanding Stringer’s direction to Chancellor, the Union presented all of the information it sought to present insofar as Caraway had stated what was written in the notebook before Stringer directed Chancellor to close his notebook. See *Postal Service*, 350 NLRB 441, 465 (2007). Immediately after the conclusion of the investigatory interview, Stringer spoke separately with Chancellor. Chancellor acknowledges that Stringer informed him that his using a notebook was not a problem, but that he “did not want the employees to use it as a script.” Prior to April 7, Shop Steward Chancellor had carried and utilized his notebook during meetings at which he was representing employees, and he has continued to do so.

Regarding the second incident, on July 23, during a break that occurred about 6 p.m., employee Velma Jones approached Steward Gregory Jones in the break room, referred to as the smoke room, and complained that her supervisor, Jerome Slade, was violating her light duty medical restrictions. Steward Jones did not know Supervisor Slade, and he asked employee
 5 Velma Jones to identify him. There were about 35 or 40 people having conversations in the smoke room. Jones pointed across the room to an individual wearing a brown hat. Steward Jones went to the bench at which the individual was sitting, but upon arriving discovered that there were two individuals wearing brown hats, Supervisor Mark Allen and Supervisor Jerome Slade, neither of whom he knew. Steward Jones first addressed Supervisor Allen regarding the
 10 complaint that employee Velma Jones had made. He learned that Allen was not her supervisor. He then began to speak with the other supervisor, Jerome Slade, whose name he did not know. Supervisor Allen began "coaching him [Slade], interfering." Steward Jones requested Supervisor Allen to excuse himself because he had "nothing to do with this grievance." Allen persisted. Jones explained that he was trying to talk to Velma Jones' supervisor. Allen accused Jones of
 15 being loud. Jones replied that he was loud, that he was "in the smoke room, but I'm loud in general." Supervisor Allen did not thereafter accuse Jones of speaking too loudly. He continued to interfere in the grievance conversation Steward Jones was having. Jones told Supervisor Slade that he would "get with you later on this grievance," and left.

Upon returning to his work station, Steward Jones requested and received permission from his direct supervisor, Mitch Huntley, to confirm his identification of Supervisor Slade. He went to the area that Slade supervised and, in conversation with another foreman, confirmed his identification of Slade. As he was returning to his work area, Supervisor Allen intercepted him, requesting that he tell him his name. Steward Jones did so, and then asked Allen for his name.
 25 He asked Allen why he wanted his name, and Allen responded that he, Jones, was being insubordinate. Jones asked how he could be insubordinate when "this has nothing to do with you." Allen replied, "Well, I got your name." Jones returned to his work station. Shortly thereafter a security guard came to Jones and stated that he was to leave the plant for being insubordinate. The guard escorted Jones from the plant. Upon arrival at his home, Jones called
 30 the plant requesting that his supervisor, Mitch Huntley, call him. Huntley did so. Jones explained that he had been escorted out of the plant. Huntley stated the he had witnessed the incident in the smoke room and that, if Jones needed him, to let him know, "I'll corroborate your story."

The following day, Jones reported to Human Resources where he met with Human
 35 Resources Generalist Isaac Garrison and Senior Foreman Donald Ray Gordon. He explained what had occurred and then was asked to wait in the lobby. Soon thereafter, Jones was told that he should return to work that evening. At some point, he was paid for the time he lost.

Labor Relations Manager Koski testified that, on the morning following the evening that
 40 Steward Jones was sent home, Human Resources Generalist Garrison informed him of the incident, reporting that Jones had "raised his voice" when talking to Allen and Slade. Koski did not testify whether Garrison reported that Supervisor Allen had persisted in interfering in the conversation Steward Jones was having with Supervisor Slade regarding the grievance relating to the work assignment of employee Velma Jones. Koski claimed that he knew that Steward
 45 Jones, who is also a preacher, always spoke loudly. He directed that Jones be called back to work. He also decided that Jones should be compensated for his lost time. Koski asserted that he decided to pay for the lost time in order "to have a good relationship at the beginning of contract negotiation." As noted, the current collective-bargaining agreement was to expire on August 4. I need to determine whether that stated motivation was true. I am satisfied that, if the report of Garrison justified removing Steward Jones from the workplace, the Respondent would have supported and endorsed the actions of its supervisor. As stated in my decision, the evidence established that the individual who was "out of line" was Supervisor Allen.

Jones engaged in advocacy on behalf of Velma Jones in his capacity as a steward. When presenting the complaint regarding violation of her light duty working restrictions, Steward Jones did not engage in any profane, threatening, or other improper conduct that would remove him from the protection of the Act. He unsuccessfully sought to have Supervisor Allen cease interrupting his grievance conversation with Supervisor Slade. He avoided any confrontation with Allen by leaving, telling Supervisor Slade that he would get with him later “on this grievance.”

Jones engaged in no misconduct, much less any misconduct that would deprive him of the protection of the Act. The Respondent presented no probative evidence of insubordination or other conduct establishing justification for the removal of Steward Jones from the plant. Neither Supervisor Allen nor Supervisor Slade testified.

The removal of Jones from the plant, although not considered to be a suspension under the Company’s formal disciplinary system, was disciplinary insofar as his escorted removal, purportedly for insubordination, was involuntary and he was deprived of his earnings until the Respondent determined to make him whole. Jones’ contact with his supervisor after his escorted removal is consistent with his being innocent of insubordination. His innocence and the absence of any justification for removing him from the workplace is confirmed by the Respondent’s returning him to work the following day with compensation for his lost time and without any formal discipline being imposed.

In my decision, I noted that there was no specific evidence of animus and therefore would recommend that the Section 8(a)(3) allegations of the complaint be dismissed. In so doing, I erred. The conduct in which Steward Jones engaged related to a grievance and was union activity as well as activity protected by Section 7 of the Act. Although no formal grievance had been filed, Labor Relations Manager Koski acknowledged that he did not “disagree that the supervisor was talking to him [Jones] as a steward.” The removal of Jones from the plant was predicated upon his actions taken on behalf of employee Velma Jones in his capacity as a union steward. Board precedent establishes that retaliation upon a union steward for performance of his activities as a steward violates Section 8(a)(3) of the Act. See *Garland Coal & Mining Co.*, 276 NLRB 963, 965 (1985), citing *McGuire & Hester*, 268 NLRB 265 (1983). I therefore hereby amend my bench decision and find that, in addition to the Section 8(a)(1) violation stated in my decision, the removal of Steward Gregory Jones from the plant because of his advocacy as a steward in support of an employee’s grievance violated Section 8(a)(3) of the Act. The foregoing additional finding has no effect upon the remedy herein.

I certify the accuracy of the portion of the transcript that sets out my decision, attached as Appendix A, page 128, line 23, through page 132, line 21.²

Conclusions of Law

1. Howard Industries, Inc., Transformer Division, the Respondent, is a corporation engaged in the production of electronic products, including transformers, at various locations including its facility in Laurel, Mississippi, from which it annually ships goods valued in excess of \$50,000 to points outside the State of Mississippi. The Respondent admits, and I find and conclude, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

² Appendix A has been corrected. The corrections are reflected in Appendix C.

2. The parties stipulated, and I find and conclude, that International Brotherhood of Electrical Workers, Local 1317, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent, by removing Union Steward Gregory Jones from its plant for his advocacy in support of a grievance relating to the working conditions of a unit employee, has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent had engaged in unfair labor practices by removing a union steward from the plant for his advocacy in support of a grievance relating to the working conditions of a unit employee, I find that it must be ordered to cease and desist therefrom and to post an appropriate notice.

In view of the foregoing, the findings of fact and conclusions of law as set out in my bench decision, as amended, and on the entire record, I issue the following recommended³

ORDER

The Respondent, Howard Industries, Inc., Transformer Division, Laurel, Mississippi, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Removing union stewards from the plant because of their advocacy in support of grievances relating to the working conditions of unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Within 14 days after service by the Region, post at its facilities in Laurel, Mississippi, copies of the attached notice marked "Appendix B."⁴ Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁴ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 7, 2008.

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(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., July 28, 2009.

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George Carson II
Administrative Law Judge

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APPENDIX A

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BENCH DECISION

23 The complaint alleges and the Company admits the
24 jurisdictional aspects of this case. Both of the allegations,
25 the allegations in paragraph 7 and paragraphs 8 and 9, relate to

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1 conduct involving stewards in the exercise of their respective
2 duties.

3 Although the complaint alleges both Section 8(a)(1) and (3) violations, I will
4 recommend that the Section 8(a)(3) allegations be dismissed
5 insofar as I have no affirmative proof of animus. I'm mindful
6 that I have granted the Respondent's
7 motion to quash the Charging
8 Party's subpoena
9 seeking to obtain statements that might support animus, but as
10 I pointed out when quashing the
11 subpoena, the remedy herein, a cease-and-desist notice, would
12 be unaffected.

13 With regard to paragraph 7, it's undisputed that the
14 showing of notes to the employee who was the subject of the
15 investigation occurred. The problem that I've got with finding
16 a violation here is that the steward was not prohibited from
17 taking notes or making notes. It was from showing notes to the
18 employee in the course of an
19 investigation with regard to improper conduct on the job by

20 that employee that the Company prohibited.

21 Mr. Chancellor, the steward, acknowledged that he had
22 used notes previously. He has used notes since, and immediately
23 after the meeting, Mr. Stringer called him back in and spoke
24 with him, saying that he had no problem with him taking and
25 making notes, that the issue was scripting the responses of the

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1 employee.

2 Even assuming that the situation as it occurred included
3 a comment of discipline, i.e., if he didn't quit
4 showing the script to Mr. Caraway, that he would be suspended,
5 that threat was not for using notes while representing other
6 employees. The threat related to showing notes to Mr. Caraway and having him
7 read his response in the investigation.

8 There's no evidence that, in this isolated instance, the
9 steward's representational responsibilities were interfered
10 with in that the only statement that was scripted,
11 according to Mr. Chancellor, was
12 stated by the employee, and therefore, I'm going to recommend
13 that paragraph 7 be dismissed.

14 Paragraphs 8 and 9 are a different matter. Steward Gregory Jones was
15 investigating the circumstances of work assignments to employee
16 Velma Jones who had been placed on light duty. He did not know
17 Velma Jones' s supervisor, an individual wearing a brown hat to whom she pointed
across the smoke room.

18 Steward Jones crossed the smoke room and found two supervisors who were sitting
next to one

19 another in the smoke room and both were wearing

20 brown hats. He

21 started speaking first with Mr. Mark Allen

22 rather than Jerome Slade.

23 Upon learning the correct identity of the respective and

24 responsible supervisor, Mr. Slade, he began speaking with him

25 relative to the employee's medical restrictions, and his

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1 uncontradicted testimony establishes that Supervisor Allen, who

2 had no involvement in the assignment of work to Velma Jones,

3 continued to interrupt and speak and argue relative to his

4 conversation with Mr. Slade.

5 Neither Mr. Allen nor Mr. Slade

6 testified, and quite frankly, on the basis of the

7 uncontradicted testimony before me, if anybody was out of line,

8 it was Supervisor Allen, not Steward Jones.

9 I'm mindful of the requirement of discipline in a plant,

10 but the uncontradicted evidence indicates that Steward Jones

11 realized that Mr. Allen was not going to cease becoming a third

12 party to their two-party conversation, i.e., the conversation

13 that Jones was seeking to have with Slade. Rather than escalate

14 the situation, to use a term that was mentioned in testimony

15 several times, Mr. Jones broke it off and left the situation,

16 indicating to Mr. Slade that he would get back with him later.

17 How in a smoke-filled break room his conduct could have

18 been deemed improper or out of line is simply not established

19 on this record. I credit all of the testimony that indicates
20 that as a preacher on the side, Mr. Jones, in fact, does speak
5 21 loudly and can be heard, but there is no indication whatsoever
22 that he was screaming, disrupting, or taking any other action
10 23 that would justify or require his removal from the facility.

24 Confirmation that he did nothing out of line, although
25 not directly shown on the record, is certainly suggested by his

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1 immediate contact upon being removed from the plant with his
20 2 supervisor, Mr. Mitch Huntley,
3 who indicated that he had been a witness and did not chastise
4 Mr. Jones for doing anything out of line with regard to that
25 5 which he had observed.

6 Stewards, of course, are permitted in the course of their
30 7 representation of employees to engage in conduct that would not
8 necessarily be acceptable were they not acting on behalf of
9 employees as stewards. In this case, even though Mr. Jones
35 10 was acting in that capacity, I simply don't have any evidence
11 that he approached the brink of conduct that was improper.

40 12 The incident was over, and I can find no justification
13 for his removal from the facility, other than Mr. Allen's
14 apparent objection to his advocacy on behalf of Ms. Velma
45 15 Jones, advocacy that he sought to address to Ms. Jones's
16 supervisor, Mr. Slade, but ceased to be able to because of the
17 interruptions of Mr. Allen.

18 And consequently, I do find that the Respondent, by

19 removing Mr. Jones from the facility, violated Section 8(a)(1)

20 of the Act.

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21 That concludes the bench decision.

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APPENDIX B

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT remove your union stewards from the plant because of their advocacy in support of grievances relating to your working conditions.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

HOWARD INDUSTRIES, INC.,
TRANSFORMER DIVISION

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

F. Edward Hebert Federal Building, 600 South Maestri Place, 7th Floor, New Orleans, LA 70130-3413
(504) 589-6361, Hours: 8:00 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (504) 589-6389

APPENDIX C

Page	Line	Delete	Insert
128	23	answer	Company
	25	respective	
	25	paragraphs 7, 8 and 9	paragraph 7 and paragraphs 8 and 9,
129	3	both 8(1) and 8(3)	both Section 8(a)(1) and (3) violations
	4	aspect of it	allegations
	6	denied counsel for Respondent's subpoena--	granted the Respondent's
	7	MR. DOOLITTLE: Charging Party's	motion to quash the Charging
	8	JUDGE ... was [delete entire line]	Party's subpoena
	10	when denying the enforcement --	
	11	i.e., and cease-and-desist notice would,	herein, a cease and desist notice, would
	12	in fact, be superfluous	be unaffected
	18	that the company was questioning	
	20	employee.	employee that the Company prohibited
	22	He's	He has
130	3	put the --,	
	6	was to quit showing him and have him	related to showing notes to Mr. Caraway and having him
	8	that	that,
	10	in fact,	
	11	, in fact effectively read or	
	14	Paragraph 8 and 9 is a different matter. A steward	Paragraphs 8 and 9 are a different matter. Steward Gregory Jones
	16	who	Velma Jones who
	16	either of	
	17	the ... employee's [delete entire line]	Velma Jones' supervisor, an individual wearing a brown hat to whom she pointed across the smoke room.
	18	direct supervisor and since they	Steward Jones crossed the smoke room and found two supervisors who
	19	break room and apparently	smoke room and
	20	if I recall the testimony correctly,	
	21	misidentified and	
131	2	that employee	Velma Jones
	5	If Mr. Allen -- neither	Neither
	8	supervisor Allen not, shop steward	Supervisor Allen, not Steward
	10	when Mr.	Steward
	13	Slade, rather	Slade. Rather
	24	is	
132	2	I believe is the correct name,	
	9	stewards, but in	stewards. In